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ROBERT J. SCHAAP
21241 Ventura Boulevard, Suite 188
Woodland Hills, CA 91364

EXAMINER

GUADALUPE, YARITZA

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,934

Applicant(s)

PHARO ET AL.

Examiner

Yaritza Guadalupe McCall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-18, 21 and 24-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-18, 21 and 24-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

In response to Amendment filed August 2, 2004

Claim Objections

1. Claims 1, 6, 25, 28, 29, 35, and 36 are objected to because of the following informalities:
 - a. Claim 1 is confusing because the claim language, in lines 4 – 8 of subparagraph b) of the claim states that intended uses of the guidance and location control system includes “at least one end of the line element . . . representing a waiting location for the individual at the front end of the line so that the individuals may proceed to a destination in advance of the front end of the line.” Similarly, lines 10 - 12 of subparagraph d) and involves a similar phrasing. However, this phrasing appears contradictory to the Examiner since it appears that the destination would be the end of the line or pathway, or that it would be past the end of the line and not in advance thereof.

Claim 1 also mentions the phrases “end of a line of the group”, “the front end of the line”, “the end of line element”, the “end of the line position”, etc. Is the “end of the line” referring to the end of the substrate? Are all these “end of lines” referring to the same element? Appropriate correction is required.

Claims 6, 25, 28, 29, 35, and 36 make reference to phrases considered confusing for the reasons stated above. Clarification to this matter is required in every instance.

- b. Claims 2 – 4 and 30 recite the limitations " the guide post ". There is insufficient antecedent basis for these limitations in the claims. Appropriate correction is required.

Double Patenting

- 2. Claims 1 - 36 of this application conflict with claims 1 - 32 of Application No. 10/633,480. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Please note that the latest amendments made to the present application and to copending application 10/633,480 appears to eliminate subject matter that differentiated the claimed subject matter in applications, resulting in conflicting claims and raising the possibility of an obviousness type Double Patenting in the future.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5 – 9, 12, 21, 24 – 25, 27 – 29, 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. (US 5,637,378) in view of Blum (US 6,219,876) and Young (US 4,663,871) and further in view of Gehweiler et al. (US 3,453,660).

Hensler et al. discloses a personnel guidance and location control system comprising at least one ground cover substrate (floor mat # 10) for disposition on a ground surface with an upper surface having a path forming guidance element and borders (16, 18) for indicating a pathway and defining a pair of spaced apart path forming members; whereby the ground cover substrate, the end of line element, and the pair of spaced apart path forming members can be located on the ground surface presenting a the desired pathway of movement to enable the orderly and controlled movement of a group of walking pedestrian individuals to a destination. Hensler et al. also discloses the substrate having path forming guidance elements associated with an upper surface thereon to form parallel pathway boundaries in a desired orientation, said upper surface of the substrate being relatively free of guidance elements except for the guidance

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elements so that the pathway is not visually obstructed, said pathway being visibly prominent and of a carpeting material, the path forming guidance elements being arranged to be visible in low and high light conditions. Hensler et al. further discloses a ground cover substrate characterized in that the width of the pathway is narrow enough so that the individuals in the pathway will proceed in an orderly movement to a destination. Hensler et al. discloses a ground cover substrate containing a resin composition blend containing plasticizers to add softness and flexibility (See Columns 3 and 4, lines 30 – 67 and 1 – 19 respectively) which will aid in allowing the substrate to be rolled and also to be treated as a rigid mat.

Hensler et al. does not discloses the at least one end of line element associated with an endmost of said cover substrate and a fixed location thereon for defining an end of a line of the group of walking pedestrian individuals and representing a waiting location for the individual at the front end of the line so that the individuals may proceed to a destination in advance of the front end of the line in an orderly and successive manner; and the path forming guidance elements each being a plurality of small discrete path forming elements associated with said cover substrate in a fixed location thereon relative to the end of line element; a plurality of movement indicator elements on said pathway between the spaced apart pathway boundaries and presented in such a manner to suggest the individuals the direction of movement; and means associated with said end of line element and small discrete path forming elements for locating same with the cover substrate as stated in claims 1, 6 and 31. Hensler et al. does not disclose said substrate comprising a first layer of a relatively rigid material as stated in claim 6.

With respect to the end of line element in claim 1 : Blum discloses a floor mat (ground cover substrate) with an end of line element capable of displaying a variety of different messages (i.e., colors, pictures, words, etc.) or any other representation that a user may want to display (See Column 4, lines 32 – 36) that are capable of enabling the orderly and controlled movement of a group of walking pedestrian individuals. Blum's floor mat teaches that it is known to include elongated elements on a ground surface, to indicate information. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the ground cover substrate disclosed by Hensler et al. to include the end of line element as taught by Blum in order to clearly communicate instructions to pedestrians for purposes of controlling the movement of a group of walking individuals. Furthermore, it is well known that substrates can be laid according to the needs or desires of a supplier or user in order (a) to draw attention to a change, or (b) to span a distance wherein the substrates as already suggested by Blum.

With respect to the informational message : Blum further discloses an apparatus having a first informational message and a second informational message and at least one of said first and second informational messages having information related to the purpose of the pedestrian individuals being controlled in movement and standing location, said first informational message (220) being located at said substrate (200) and which is substitutable so that said second informational substrate may be readily and quickly substituted (See Column 4, lines 56- 67) at

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said substrate for said first informational message so that only said second message is visibly presented if so desired by the user and further characterized in that said second informational message can be substituted for said first informational message by applying an appliqué to said first layer located over the first informational message. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the ground cover substrate disclosed by Hensler et al. to include a first informational message and a second informational message being located at said substrate and being substitutable so that said second informational substrate may be readily and quickly substituted as taught by Blum in order to increase the versatility of the apparatus by allowing multiple messages adapted to be displayed in a simultaneous and/or consecutive manner by season, direction information, or any message desired by the user.

With respect to claim 6 : Blum discloses an apparatus having a substrate (200) comprising a first layer of a relatively rigid material (See Column 3, lines 48 – 51 respectively), which has a generally transparent portion (300) allowing one of said informational messages on said substrate to show there through such that a pedestrian individual being controlled in movement or in a standing position will be in a position to readily observe said informational message; said first layer providing sufficient weight to the substrate so that edges do not curl when disposed on a ground substrate, and a second layer of a relatively flexible material secured to said first layer and which aids in allowing the substrate to be rolled and also to be treated as a rigid mat, further characterized in that said first information message is located at an underside of

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said first layer and under said generally transparent portion of said first layer so that said first informational message appears directly through said first layer, wherein the element representing a standing or waiting position is removable from said substrate so that a new element can be substituted therefor, and wherein said element representing a standing or waiting position is fitted into a recess formed in the ground cover substrate for holding same.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the ground cover substrate disclosed by Hensler et al. so as to make the ground cover substrate of a rigid and transparent first layer and flexible second layer as taught by Blum in order to provide a structure sufficiently strong so as to resist weather or external forces but also capable of being rolled or folded for storage.

With respect to the intended uses : the examiner points out that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the structural limitations are able to stand alone. See *In re Hirao* , 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie* , 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

Regarding the plurality of small discrete path forming elements : Gehweiler et al. teaches the use of a plurality of small discrete path forming elements (rows of circular die cut indicating members) attached to a ground substrate is favorable over painted marking lines to mark aisles and crosswalks in factories, warehouses, etc. (See Column 1, lines 24 – 37). The indicating members are attached to the substrate by a fastening means comprising an adhesive on the underside of the elements, which is temporarily covered by a removable liner. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the ground cover substrate disclosed by Hensler et al. with a plurality of small discrete path forming elements as taught by Gehweiler et al. in place of lines because discrete path forming elements provide a low cost and efficient means for marking the path since it requires less material.

With respect to claims 6, 21, 24 and 29 : The claim refers to a first layer providing “sufficient weight” and a pathway being “sufficiently narrow”. The recitation that an element is “sufficient” to perform a given function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Regarding the method claim 25 : The method as stated in claim 25 will be met by the regular operation of the apparatus disclosed by Hensler et al., Blum and Young above.

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5. Claims 2 – 4 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. (US 5,637,378) in view of Blum (US 6,219,876) and Gehweiler et al. (US 3,453,660) and further in view of Young (US 4,663,871).

Hensler et al., Blum, and Gehweiler et al. disclose an apparatus as stated in paragraph 4 above.

Hensler et al. Blum, and Gehweiler et al. do not disclose the at least one upstanding guide post located in proximity to an edge of said ground cover substrate and at a region of the substrate when the pathway of movement changes direction; said guide post effectively defining a change in direction of the pathway and also cooperating with the discrete path forming elements which also show a change direction to alert the group pedestrian individuals in the pathway of a potential change of direction of the pathway in advance of reaching that change of direction as stated in claims 2 – 4 and 30.

Regarding the upstanding guide post as stated in claims 2 – 4 and 30 : Young discloses a system (See Figure 1) that teaches that in order to control a flow of traffic it is well known to provide a set of lines indicating the borders and the limits along the sides of the road and, in addition, an upstanding guide post (10) extending from the ground and located in proximity to an edge of the ground with a visual indication of an upcoming change in direction so as to alert the traffic in the pathway of a potential change of direction of the pathway in advance of reaching that change of direction. Therefore, it would have been obvious to a person having

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ordinary skill in the art at the time the invention was made to modify the ground cover substrate disclosed by Hensler et al. to include an upstanding guide post as taught by Young for the purpose of visually alerting the pedestrian of an upcoming pathway change in advance of reaching that change.

6. Claims 10 – 11, 13, 15 – 18, 26, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. (US 5,637,378), Blum (US 6,219,876), and Gehweiler et al., as applied to claims 1 – 9, 12, 21, 24 – 25 and 27 above, and further in view of Ney et al. (US 6,319,592).

Hensler et al., Blum, and Gehweiler et al. disclose an apparatus as stated in paragraph 4 above.

Hensler et al., Blum, and Gehweiler et al. do not disclose the first informational message being comprised of ink printed on the underside of the first layer; the first informational message being printed on a sheet material located at an underside of said first layer and appears through a transparent portion of said first layer; and said second informational message can be substituted for said first informational message by applying an appliqué to said first layer located over the first informational message as stated in claims 10 – 11. Hensler et al., Blum, and Gehweiler et al. do not disclose said first layer made of a polycarbonate material and said second layer made of an acrylonitrile butadiene styrene co-polymer and where said first layer has a thickness of no

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greater than one- fourth inch and said second layer has a thickness of no greater than one-fourth inch as stated in claim 13.

Regarding claims 10 and 11 : Ney et al. discloses a floor mat (10) having a transparent mat base (12) and an upper side surface (32) having a printed graphic / informational message (20) being printed on a sheet material with ink, i.e., ink jet printing (See Column 2, lines 30 – 41) and appears through a transparent portion (54) of said first layer. Ney et al. also discloses a bonding layer (42, 60) between the first and second layers. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the combination of Hensler et al., Blum and Gehweiler to ink print the message for a permanent message on the underside of the first layer since Ney et al. discloses that ink printing is an alternate method of printing information on a substrate.

With respect to the thickness and material of the first layer as stated in claim 13 : Ney et al. also discloses a floor mat having a first layer including a protective layer (56) made of a polycarbonate material (See Column 3, lines 4 – 10) having a thickness of 0.005 inches. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the first and second layer with a thickness of no more than ¼ inch, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding the thickness and material of the second layer as stated in claim 13 : Ney et al. discloses the second layer made of a semi-rigid PVC, polycarbonate or any other suitable material having a thickness no greater than one-fourth inch (See Column 2, lines 8 – 23). To make the second layer of an acrylonitrile butadiene styrene material, absent any criticality, would have been obvious to a person having ordinary skill in the art at the time the invention was made, since it has been held to be within the general skill in the art to select a known material on the basis of its suitability for the intended uses as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 15 : The claim refers to a first layer providing “sufficient weight”. The recitation that an element is “sufficient” to perform a given function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

7. Claims 32 – 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. (US 5,637,378) in view of Blum (US 6,219,876) and Gehweiler et al. (US 3,453,660) and further in view of Sanders (US 5,123,130).

Hensler et al., Blum and Gehweiler et al. disclose a personnel guidance and location control system as stated in paragraph 4 above.

Hensler et al., Blum and Gehweiler et al. do not disclose the plurality of movement indicator elements being footprints as stated in claims 32 – 33.

In regards claims 32 – 33 : Hensler et al., Blum and Gehweiler et al. teach the use of a ground cover substrate (floor mat) having an end of line element. Sanders discloses a ground cover substrate (floor mat) provided with a plurality of movement indicator elements (13) located at said mat and representing a footprint to cause the pedestrian individuals to enter and follow the pathway. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a plurality of movement indicator elements / footprints as taught by Sanders to the system disclosed by Hensler et al., Blum and Gehweiler et al. in order to lead the way to a destination by providing visible element in high and low light conditions.

Response to Arguments

8. Applicant's arguments with respect to claims 1 - 36 have been considered but are moot in view of the new ground(s) of rejection.

Applicant remarks regarding the Personal Interview conducted on February 19, 2004 are not persuasive and inaccurate. Applicant states that the interview was conducted with the Examiner and Supervisory Examiner Diego F.F. Gutierrez, and further adds that the amendment

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to claim 1 including the addition of a plurality of movements indicator elements on the pathway, i.e., footprints, was believed by both Examiners to potentially place the claims in condition for allowance. These assertions by the Applicant are inaccurate.

The aforesaid interview was conducted by the Examiner of record, Yaritza Guadalupe, and Examiner R. Alexander Smith, was invited to be present since he is involved in the examination of the copending application 10/633,480, which involves a similar subject matter. Supervisory Examiner Diego F.F. Gutierrez was not present during the interview. In addition, the proposal of a claim amendment to include footprints was not discussed nor indicated as a potential allowable subject matter. Please note that the Interview Summary on record does not make any mention of any this matter. In fact, during the course of the interview Applicant was notified that the claims recite merely intended and functional language and that the structural features are not considered to carry any patentable weight since the prior art of record clearly anticipates the structure as claimed. Applicant has not been indicated, either in the previous Office Actions or the Interview Summary of any potential allowable subject matter.

In response to Applicant's argument on page 30 that there is no suggestion to combine the references to achieve the combination of materials, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the

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combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969).

In this case, Hensler et al. discloses to one of ordinary skill in the art that mats can be used to lead a person to a destination and that these mats can have outer boundaries highlighted to make the path defined by the mat noticeable. Gehweiler et al. discloses that appliques can be used to mark an outline to a path. Blum discloses that indicia, e.g., signs and etc, can be placed anywhere needed to provide information including on, or recessed within, flooring including concrete, carpeting, etc. Therefore it would have been obvious to one of ordinary skill in the art to combine Hensler et al. and Blum to Gehweiler et al. for the reasons as stated in the rejection applied above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

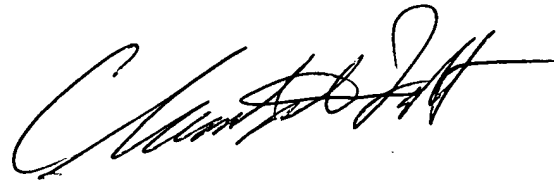
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yaritza Guadalupe
Patent Examiner
Art Unit 2859
October 18, 2004

A handwritten signature in black ink, appearing to read 'Christopher W. Fulton', with a stylized, flowing script.

**CHRISTOPHER W. FULTON
PRIMARY EXAMINER**